

TITLE 2
CHAPTER 10

QUASI JUDICIAL HEARINGS

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2-10-1: DEFINITIONS:

HEARING BODY: The City Council, Planning Commission, Design Review Board or Hearing Official, as the context requires.

PARTY: The applicant or any person who has timely submitted written or oral evidence or testimony for consideration in a quasi-judicial evidentiary hearing.

2-10-2: PROCEDURES: The quasi-judicial procedures set forth in Title 2 Chapter 10 supersede any rules of procedure (Roberts Rules of Order), resolution bylaw, ordinance, or section of this Code in conflicting rules and procedures. These procedures supplement the particular land use decisional processes set forth in other parts of this Code to the extent that those processes are consistent herewith. Where these procedures conflict with requirements of State law, State law shall prevail.

2-10-3: CONDUCT:

- A. No person may be disorderly, abusive, or disruptive of the conduct of the hearing.
- B. No person may present evidence, argument or comment without first being recognized by the presiding officer.
- C. All witnesses shall identify themselves, their physical address and mailing address.
- D. Any employee, agent, or officer of the City shall disclose his or her relationship to the City when commencing to testify.
- E. Formal rules of evidence as used in course of law shall not apply.
- F. All documents or other written materials relied on by the applicant shall be submitted to the City and, along with the applications, be made available to the public at the time that notice of the public hearing is provided. Any staff notes or reports to be made part of the record shall be available to the public at least seven days prior to the hearing.
- G. Audience demonstrations such as applause, cheering, display of signs, and other conduct disruptive of the hearing, shall not be permitted. Any such conduct may be cause of immediate suspension of the hearing at the sole discretion of the presiding officer.

2-10-4: CHALLENGES TO IMPARTIALITY:

- A. **Challenges:** Any proponent, opponent, or person interested in a matter to be heard, and any member of the hearing body may challenge the qualification of any other member of that hearing body to participate in the hearing and decision regarding the matter. The challenge shall state by affidavit the fact relied upon by the challenger as the basis for the challenge.

1. Any member of the public may raise conflict of interest issues prior to the hearing.
 2. The challenge shall be made a part of the record of the hearing.
- B. **Conflict of Interest:** No member of the hearing body may discuss or vote on a matter when:
1. Any of the following has a direct or substantial pecuniary interest in the matter: the member or his or her spouse, brother, sister, child, parent, father-in-law, or mother-in-law; or business in which the member is then serving as an officer or director or employee or has so served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning a prospective partnership, employment or other business affiliation.
 2. The member owns all or a portion of the property that is the subject of the matter before the hearing body or owns abutting or adjacent property.
 3. The member has a direct personal interest in the matter or for any other reason cannot participate in the hearing and decision impartially.
- C. **Abstentions:** Because of the importance of preserving public confidence in decisions made by the hearing body a member of that hearing body may elect to abstain from a particular hearing when in fact the member is not disqualified under Subsection B of this Section but simply desires to avoid the mere appearance of partiality. Abstention in such an instance shall be solely a matter of the member's own judgment. A member who feels that abstention may be necessary or desirable under this section shall seek the advice of the hearing body and then state the member's decision and the reasons for the abstention.
- D. **Ex Parte Contacts:** At the commencement of the hearing on a matter, members of the hearing body shall reveal all ex-parte contacts they have had about the matter in the manner provided in Section 2-10-7-B. If the contacts have not impaired the member's impartiality, the member shall so state that fact and participate or abstain in accordance with subsection C of this section. Ex parte contacts are communications directly or indirectly with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing. Ex parte contacts also include any communication, report, or other materials outside the record in connection with the particular case, unless all participants are given the opportunity to respond to the materials.
- E. No other officer or employee of the City who has a financial or other private interest in a matter before the hearing body may participate in discussion of the matter, or give an official opinion on the matter to the hearing body without first declaring for the record the nature and extent of that interest.
- F. Notwithstanding any other rule, an abstaining or disqualified member shall constitute part of a quorum and may represent the member's interest at a hearing, provided the member joins the audience, makes full disclosure of the member's status and position when addressing the hearing body and abstains from discussion and from voting on the matter as a member of the hearing body.
- G. Disqualification for reasons set forth in subsection B of this section may be ordered by a majority of the members of the hearing body present at the hearing. The member who is the subject of the motion for disqualification may not vote on the motion.
- H. If all members of the hearing body abstain or are disqualified and consequently cannot reach a decision while so abstaining or disqualified, all members present, after stating their reasons for abstention or disqualification, shall by so doing be re-qualified and proceed to resolve the issues, unless such participation violates State or Federal law or the City Charter.
- I. A member absent during the presentation of any evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.

2-10-5: PRESIDING OFFICER:

- A. The presiding officer shall:
1. Regulate the course and decorum of the hearing.
 2. Attend to procedural requests or similar matters.

3. Impose reasonable limitations on the number of witnesses to be heard and set reasonable time lines for oral presentation, questioning of witnesses, and rebuttal testimony.
 4. Take other action authorized by the hearing body for conduct appropriate for the hearing.
- B. Any ruling by the presiding officer may be put to a vote by the hearing body upon a motion duly made, seconded and discussed. The decision on the motion shall be final for the purpose of the proceeding.

2-10-6: BURDEN OF PROOF: The burden of proof is upon the applicant. A decision to resolve the issues presented shall be based upon reliable, probative and substantial evidence in the whole record.

2-10-7: ORDER OF PROCEDURE: The presiding officer in the conduct of the hearing shall:

- A. Open the hearing by announcing the nature, purpose and time of the hearing and summarize the rules for its conduct.
1. State that testimony and evidence must be directed toward the specified criteria or to other criteria in the plan or land use regulation which the person believes to apply to the decision; and
 2. State that failure to raise an issue with sufficient specificity to afford the decision and the parties an opportunity to respond to the issue precludes an appeal on that issue to a higher City hearing body or to the Land Use Board of Appeals.
 3. State that the failure of the applicant to raise a constitutional or other issue relating to the proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court.
- B. Call for statements of conflicts of interest, ex parte contacts, and biases, abstentions, or challenges to impartiality:
1. If any member of the hearing body has visited the property which is the subject of the land use application as part of the preparation for the hearing, any observations from the site view that are relevant to the decision shall be disclosed.
 2. Any member of the hearing body who has been subject to significant ex parte contacts regarding the matter shall place on the record the substance of the communication. If the contact has not impaired the member's impartiality, the members shall so state and may then participate in the hearing and decision. If the member believes that his or her impartiality has been affected by the contacts, the members shall not participate in the hearing and decision. If the member is uncertain or wishes to avoid the appearance of partiality, the member shall seek the hearing body's advice and announce a decision regarding participation in the hearing and decision, and give the reasons for the action.
 3. If the member making the disclosure of ex parte contacts decides to participate in the hearing, the presiding officer shall announce that any person, during their testimony, has the right to rebut the substance of the communication. Communication between City Staff and the hearing body shall not be considered an ex parte contact.
 4. Any member of the hearing body who has a potential conflict of interest regarding the matter shall disclose the nature of the potential conflict, on the record. Following disclosure, the member may proceed in the same manner as described in subparagraph 2 of this subsection.
 5. Any member of the hearing body who has an interest in the matter as described in subsection 2-10-4-B may not discuss or vote on the matter. Following disclosure of the conflict of interest, the member shall leave the table during hearing, deliberation, discussion, and voting on the matter.
 6. Any member considering abstention for reasons other than those described above shall state the reasons for the abstention, seek the advice of the hearing body, and announce a decision and the reasons therefore.
 7. Any member whose participation has been challenged by allegation of bias, prejudice, personal interest, or partiality may make a statement in response or in explanation thereof for the record, and state a decision of whether or not to participate in the hearing. The statement shall be subject to cross examination only upon consent of that member, but shall be subject to rebuttal by the proponent, opponent, or other interested party.
 8. The presiding officer shall provide opportunity for additional statements or discussions and proceedings in connection with the impartiality of members of the hearing.

9. Any member who abstains shall not participate in discussion of the matter or vote upon any procedural or substantive issue concerning it.
- C. Call for the Applicable Substantive Criteria and Staff Report. Staff notes and reports that have been delivered to members along with the application or proposal and supporting materials prior to the hearing shall be made a part of the record. The presiding officer shall then request that City staff list the applicable substantive criteria, summarize the nature of the proposal, explain any graphic or pictorial displays which are part of the record, summarize the findings and decisions of whatever hearing body has previously considered the matter, and provide whatever other information is requested by the hearing body.
 - D. Call for testimony in the following order:
 1. The applicant or representative (as provided in subsection B of Section 2-10-8).
 2. Proponents
 3. Opponents.
 4. Neutral Parties.
 5. Applicant rebuttal (as provided in subsection D of Section 2-10-8).
 - E. Call for staff response and recommendations.
 - F. Announce whether:
 1. The record is closed (as provided under Section 2-10-9);
 2. The record will be held open (as provided in subsection F of Section 2-10-8); or
 3. The hearing will be continued (as provided in subsection G of Section 2-10-8).

2-10-8: RULES OF PROCEDURE

- A. Coordination of Testimony. To the degree necessary to an orderly process within available time, the presiding officer may consolidate submissions by participants or establish reasonable time limits for presentation of testimony. One or more spokespersons for any group may be designated by the presiding officer.
- B. Proponent's Case. The applicant or their representative shall first be heard, and other persons or groups in favor of the applicant's proposal shall next be heard. If the applicant or any person representing the applicant provides documentary or oral evidence in support of the application at the hearing, which were not previously submitted under subsection 2-10-3-F, other than staff notes or reports or excerpts thereof, any party shall be entitled to request that the record be held open as provided in subparagraph F of this subsection.
- C. Questioning of Witnesses. The questioning of witnesses is a matter solely within the discretion of the hearing body acting through the presiding officer except as subsection B of Section 2-10-5 provides to the contrary. The presiding officer, as deemed necessary or desirable, may permit the questioning of witnesses by members of the hearing body, staff and other interested persons at the conclusion of the witness's presentation. No questioning of witnesses shall be permitted after the proponent's rebuttal, except the questioning of rebuttal witnesses as to matters contained in rebuttal testimony. All questions to witnesses shall be submitted to the witness through the presiding officer unless the presiding officer expressly permits the submission of questions directly to a witness.
- D. Rebuttal Evidence. The presiding officer shall allow the applicant or his or her representative to offer additional evidence and testimony, which shall be confined to rebutting the evidence and testimony offered by interested persons, opponents, and the City staff.
- E. Raising Issues. An issue which may be the basis for an appeal to a higher City hearing body or to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the application. Such issues shall be raised with sufficient specificity so as to afford the hearing body and participants in the hearing an adequate opportunity to respond to each issue.

- F. Holding the Record Open. Unless the hearing is continued, if a party so requests prior to the close of the initial evidentiary hearing, the record shall remain open for seven days or a longer period of time specified by the presiding officer. During this time any person may submit documents or written testimony to clarify, supplement, or rebut evidence already in the record. For a period thereafter of seven days or a longer time specified by the presiding officer, the applicant may rebut the evidence and written testimony submitted during the open record period. The record shall then be closed. The hearing body shall disregard any new evidence or other evidence that is not within the limitations of this subparagraph.
- G. Continuance of Hearing. The presiding officer may continue the hearing for any reason deemed appropriate to a specified time, date and location.

2-10-9: CLOSURE AND DELIBERATIONS: Subsequent to staff response and recommendations, the presiding officer shall close the hearing unless the hearing is to be continued. If the hearing is closed and the record is to be held open, then the presiding officer shall set a time and date for the record to close. After the hearing and the record have been closed, the hearing body shall deliberate on the matter heard. During the deliberation the hearing body may consult with the City staff and pose questions for review, analysis, and response by the staff. The consultation and questioning shall not constitute re-opening of the hearing. If the presiding officer concludes, however, that new evidence has been presented during the consultation or questioning, the officer shall, upon designation of the new evidence permit the applicant and parties to respond briefly, present evidence, and raise issues with respect to the designated material. The hearing body shall then continue its deliberation to a subsequent meeting at a specified time and place, state its findings of fact and conclusions, or state its decision generally and request that staff prepare proposed findings of fact and conclusions. The staff may request proposed findings of fact and conclusions from any party. All actions taken by the hearing body pursuant to this section shall be made a part of the record.

2-10-10: OFFICIAL NOTICE:

- A. The hearings body may take official notice of the following:
 - 1. All facts which are judicially noticeable.
 - 2. All public records of the City.
 - 3. The Charter, ordinances, resolutions, rules, regulations, and officially promulgated policies of the City.
- B. Matters officially noticed need not be established by evidence and may be considered by the hearings body in the determination of the proposal.

2-10-11: RECORD OF PROCEEDINGS:

- A. An adequate record of the hearing shall be prepared in accordance with Section 17 of the Florence City Charter and State law as applicable. To assist in the preparation of the record, the proceedings may be stenographically or electronically recorded, but the record need not set forth evidence verbatim.
- B. Where practicable, the presiding officer shall cause all presented physical and documentary evidence to be received and to be marked to show the identity of the person offering the evidence and to indicate whether it is presented on behalf of the proponent or an opponent. If evidence is not capable of being incorporated in the record, it shall not be included.
- C. Any member of the public shall have access to the record of the proceedings at reasonable times and places. Members of the public shall be entitled to receive copies of the record at their own expense.

2-10-12: AMENDMENT AND SUSPENSION OF RULES: Any rule of procedure not required by Federal or State law or the City Charter may be amended or suspended at any hearing by majority vote of those members of the hearing body present and voting.

Amended by Ord. 13, Series 2004
 Amended by Ord. 26, Series 2008 – effective 1-14-09